

# EXHIBIT

# A

**BRAY, MILLER & BRAY, L.L.C.**

Attorneys at Law  
Ivy Corporate Park  
100 Misty Lane  
Parsippany, New Jersey 07054-2710  
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Attorneys for Plaintiff(s)

**RICHAHD GREENBERG**

Plaintiff,

vs.

**PRO SHARES TRUST and PRO FUND ADVISORS, L.L.C.,**

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MORRIS COUNTY

DOCKET NO. L-1101-09

CIVIL ACTION

*Summons*

From the State of New Jersey  
To the Defendant(s) Named Above:

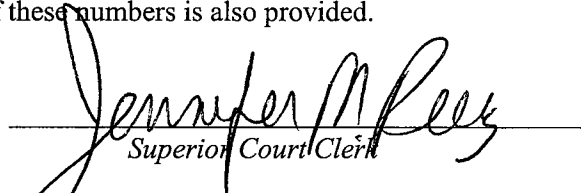
**PRO FUND ADVISORS, L.L.C.**

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The Complaint attached to this Summons states the basis for this lawsuit. If you dispute this Complaint, you or your attorney must file a written answer or motion and proof of service with the Deputy Clerk of the Superior Court in the county listed above within 35 days from the date you received this Summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the Complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the Deputy Clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the Court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the Court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

Dated: May 4, 2009

  
Superior Court Clerk

Name of Defendant to Be Served:  
Address of Defendant to Be Served:

Pro Fund Advisors, L.L.C.  
c/o Louis Mayberg, Registered Agent  
7501 Wisconsin Avenue, Suite 1000  
Bethesda, Maryland 20814-6527

FORNATO CL  
SUPERIOR COURT  
COUNTY STAFF  
MORRISTOWN

N.J. 07960

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (973) 255-4101  
COURT HOURS

DATE: APRIL 26, 2009  
RE: OPLENEXS V3 PRO SHARES TRUST  
DOCKET# 0001101 OF

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 1.

RECEIVED 15 200 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS  
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE TRIAL JUDGE ASSIGNED IS: HON. V. H. DUMONT

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001  
AT: (973) 255-4101

IT IS BELIEVED THAT THE TRACK IS APPROPRIATE YOU MUST FILE A  
CERTIFICATION OF FILING CALVE WITHIN 90 DAYS OF THE FILING OF YOUR P.S. 100.  
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES TO ACCORDANCE  
WITH RULES.

ATTENTION:

ATTN: PETER B. BRAY  
BRAY HILLER & BRAY  
100 WEST LANE  
PARSONS, N.J. 07654-2741

ACKED

2

2

*[Handwritten signature]*

600 PIS COBBL  
SUPERIOR COURT  
COURT STREET  
MORRISTOWN

NJ 07950

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (973) 656-4100  
COURT HOURS

DATE: APRIL 26, 2009  
RE: GREENBERG VS PRO SHARES TRUST  
DOCKET: NRS L -001101 09

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 2.

DISCOVERY IS 300 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS  
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON W H. DUMONT

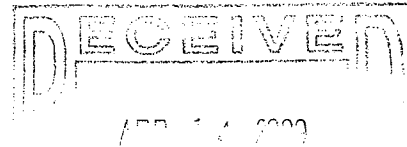
IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 901  
AT: (973) 656-4100.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A  
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.  
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE  
WITH P.4:54-2.

ATTENTION:

ATT: PETER R. GRAY  
GRAY MILLER & GRAY  
100 MISTY LANE  
PARSIPPANY NJ 07054-2741

BUJKE



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial Law Division - Civil Part pleadings (not motions) under Rule 4:5-1.  
Pleading will be rejected, under Rule 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE: CK CG CA

CHG / CK NO.

AMOUNT:

OVERPAYMENT:

BATCH NUMBER:

ATTORNEY/PRO SE NAME

PETER R. BRAY, ESQ.

TELEPHONE NUMBER

973-739-9600

COUNTY OF VENUE

MORRIS COUNTY

FIRM NAME (If Applicable)

BRAY, MILLER &amp; BRAY, L.L.C.

DOCKET NUMBER (When Available)

L-1101-09

OFFICE ADDRESS

100 Misty Lane - Ivy Corporate Park  
Parsippany, NJ 07054

DOCUMENT TYPE

Complaint

JURY DEMAND

Yes ☒ No ☐

NAME OF PARTY (e.g., John Doe, Plaintiff)

Richard Greenberg, Plaintiff

CAPTION

Richard Greenberg v. Pro Shares Trust and Pro Shares Advisors,  
L.L.C.

CASE TYPE NUMBER

(See reverse side for listing):

699

IS THIS A PROFESSIONAL MALPRACTICE CASE?

Yes ☐ No ☒IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW  
REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.RELATED CASES  
PENDING?Yes ☐ No ☒

IF YES, LIST DOCKET NUMBERS

DO YOU ANTICIPATE ADDING ANY  
PARTIES (arising out of same  
transaction or occurrence)?Yes ☐ No ☒

NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN

☐ NONE☐ UNKNOWN

**THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.**

## CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

A. DO PARTIES HAVE A CURRENT PAST  
OR RECURRENT RELATIONSHIP?Yes ☐ No ☒IF YES, IS THAT  
RELATIONSHIP☐ EMPLOYER-EMPLOYEE☐ FAMILIAL☐ FRIEND/NEIGHBOR☐ BUSINESS☐ OTHER (explain) \_\_\_\_\_B. DOES THE STATUTE GOVERNING THIS  
CASE PROVIDE FOR PAYMENT OF FEES BY  
THE LOSING PARTY?Yes ☐ No ☒USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS  
THAT MAY WARRANT INDIVIDUAL MANAGEMENT ON ACCELERATED DISPOSITION.

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SUPERIOR COURT  
2009 APR -3 AM 9:17  
CIVIL DIVISION

DO YOU OR YOUR CLIENT NEED ANY  
DISABILITIES ACCOMMODATIONS?Yes ☐ No ☒

IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:

WILL AN INTERPRETER BE NEEDED?

Yes ☐ No ☒

IF YES, FOR WHAT LANGUAGE::

ATTORNEY SIGNATURE

SIDE 2

**CIVIL CASE INFORMATION STATEMENT****(CIS)**Use for initial pleadings (not motions) under *Rule 4:5-1*.**CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)**Track I — 150 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
- 999 OTHER (Briefly describe nature of action)

**Track II — 300 days' discovery**

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 699 TORT - OTHER

**Track III — 450 days' discovery**

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER/CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

**Track IV — Active Case Management by Individual Judge/450 days' discovery**

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

**Mass Tort (Track IV)**

- |                                       |                                |
|---------------------------------------|--------------------------------|
| 241 TOBACCO                           | 274 RISPERDAL/SEROQUEL/ZYPREXA |
| 248 CIBA GEIGY                        | 275 ORTHO EVRA                 |
| 264 PPA                               | 276 DEPO-PROVERA               |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 601 ASBESTOS                   |
| 271 ACCUTANE                          | 619 VIOXX                      |
| 272 BEXTRA/CELEBREX                   |                                |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

☐

Verbal Threshold

☐

Putative Class Action

☐

Title 59

**BRAY, MILLER & BRAY, L.L.C.**

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100 Misty Lane  
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Telephone No.: 973-739-9600  
Facsimile No.: 973-739-9696  
Attorneys for Plaintiff

RICHARD GREENBERG,  
Plaintiff,

v.

PRO SHARES TRUST and PRO SHARES  
ADVISORS, L.L.C.,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MORRIS COUNTY  
DOCKET NO.: L-1101-09

Civil Action

**COMPLAINT AND JURY DEMAND**

Plaintiff, by way of Complaint against the Defendants says:

**FIRST COUNT**

**IDENTIFICATION OF PARTIES**

1. Plaintiff, Richard Greenberg ("Greenberg") resides at 619 North 21<sup>st</sup> Terrace, Boca Raton, Florida 33469.
2. Greenberg is an individual who invests from time to time in publicly-traded securities.
3. Defendant, Pro Shares Trust ("Pro Shares") is a Delaware business trust with principal offices at 7501 Wisconsin Avenue, Bethesda, Maryland 20814.
4. Pro Shares is a registered investment company with several exchange-traded funds that are listed on the American Stock Exchange ("The Funds").
5. Pro Shares is affiliated with Defendant, Pro Shares Advisors, L.L.C. ("Advisors"), who serves as an investment advisor to each of The Funds and maintains offices with Pro Shares.

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SUPERIOR COURT  
2009 APR - 3 AM 9:17  
CIVIL DIVISION

### **BASIS FOR VENUE**

6. The misrepresentations and wrongful acts that are the subject of this action occurred at 100 Misty Lane, Parsippany, New Jersey. Hence, venue of this action is in Morris County.

### **BACKGROUND**

7. Pro Shares, through The Funds, establishes investment securities.

8. Pro Shares and Advisors have generally represented The Funds to be investments whose values correlate to the performance of an established benchmark or index. Specifically:

(a) Some of The Funds are established so that so called "long purchases" fluctuate in accordance with the price performance in a designated index or benchmark.

(b) Some of The Funds are established so that so called "short purchases" fluctuate inverse to the price performance in a designated index or benchmark.

(c) Some of The Funds are established so that they fluctuate based upon a designated multiple of the price performance of an index or benchmark.

9. Pro Shares has designated, and named, investments that will have price return characteristics double (200%) of the underlying index as: "Ultra Pro Shares."

10. Pro Shares has designated, and named, investments that will have price return characteristics equal to, or equal to a multiple of, the inverse of the underlying index as: "Short Pro Shares" and "Ultra Short Pro Shares," respectively.

11. On or about August 1, 2008, Michael P. Warren ("Warren"), a Regional Vice President of Advisors, made a sales visit and presentation at Greenberg's offices at 100 Misty Lane, Parsippany, New Jersey.



12. In addition to Greenberg and Warren, Greenberg's registered investment advisor and another registered investment advisor were present.

**CAUSE OF ACTION**

13. At the aforesaid meeting and presentation, Warren provided assurances and made material representations about the performance of Pro Shares, with a particular emphasis upon the performance of the Ultra Pro Shares and Ultra Short Pro Shares.

14. In response to inquiries, Warren expressly represented that the Ultra Pro Shares price performance for indices, including international indices, would fluctuate at a price of 200% of the inverse of the designated index and the Ultra Pro Shares would fluctuate at a price of 200% of the designated index.

15. Warren knew, or should have reasonably known, that the aforesaid representations were false and misleading.

16. The aforesaid representations were made with the intent that Greenberg rely upon same and make investment purchases in The Funds offered by Pro Shares.

17. Warren also represented that his firm actually provided the investment advice and counsel to Pro Shares and that he was well-qualified to provide accurate information on the performance of The Funds.

18. In reasonable reliance upon the aforesaid representations and assurances, Greenberg made substantial investments in, and purchases of, Ultra Short Pro Shares and Ultra Pro Shares.

19. The Pro Shares' securities purchased as aforesaid did not perform, and have not performed as represented. Specifically, these securities have not had a price performance equal

to either two (2) times equal to the inverse of, or two (2) times the price performance designated indices.

20. Greenberg was induced to invest, and purchase, the aforesaid securities, based upon untrue statements of material facts and omissions that, if made, would have made the statements actually made not be misleading.

21. Greenberg was also induced to make these purchases and investments based upon the aforesaid, which constituted a scheme or artifice to defraud.

22. Greenberg was also induced to purchase based upon the aforesaid conduct, which involved deceit.

23. Greenberg was unaware, at the time of the said misconduct and at the time of the purchases and investments, that the aforesaid statements and conduct were untruthful, misleading, fraudulent and deceptive.

24. Upon information and belief, Warren knew, or reasonably had to know, that his statements and conduct were untruthful, misleading, fraudulent and deceptive.

25. Warren acted as aforesaid, as a representative and agent of Advisors and Pro Shares; and, Warren was otherwise authorized to act and speak for, and to bind, Advisors and Pro Shares.

26. The aforesaid conduct violated N.J.S.A. 49:3-71.

27. Greenberg has been damaged as a direct and proximate result of the foregoing.

28. Pro Shares and Advisors are jointly and severally liable to Greenberg in accordance with the provisions of N.J.S.A. 49:3-71.

**WHEREFORE**, Greenberg demands judgment against Pro Shares and Advisors jointly, severally, or in the alternative, for the following relief:

- (a) Compensatory Damages.
- (b) Interest.
- (c) Counsel Fees.
- (d) Costs of Suit.
- (e) Such other relief as is just and equitable.

**SECOND COUNT**

1. Greenberg repeats and incorporates herein by reference the allegations of the First Count as if same were set forth herein at length.

2. Greenberg reserves the right to tender the securities back to Pro Shares in exchange for repayment of the consideration paid.

**WHEREFORE**, Greenberg demands judgment against Pro Shares and Advisors jointly, severally, or in the alternative, for the following relief:

- (a) The remedies provided in N.J.S.A. 49:3-71 when a tender has been made.
- (b) Counsel Fees.
- (c) Costs of Suit.
- (d) Such other relief as is just and equitable.

**THIRD COUNT**

1. Greenberg repeats and incorporates herein by reference the allegations of the First and Second Counts as if same were set forth herein at length.

2. The aforesaid actions and conduct constitute a common law fraud. Specifically:

- (a) Misrepresentations of material facts were made as aforesaid.
- (b) Pro Shares and Advisors knew, or should have known, the said representations by their authorized agent (Warren) were false and misleading.

(c) The aforesaid misrepresentations were made to induce Greenberg to purchase and invest in Pro Shares, Ultra Pro Shares, Short Pro Shares and Ultra Short Pro Shares.

(d) Pro Shares and Advisors intended that Greenberg rely upon the aforesaid.

(e) Greenberg did reasonably rely upon the aforesaid to his detriment.

3. Greenberg has been damaged as a direct and proximate result of the aforesaid intentionally wrongful conduct.

**WHEREFORE**, Greenberg demands judgment against Pro Shares and Advisors jointly, severally, or in the alternative, for the following relief:

- (a) Compensatory Damages.
- (b) Punitive Damages.
- (c) Interest
- (d) Counsel Fees.
- (e) Costs of Suit.
- (f) Such other relief as is just and equitable.

**BRAY, MILLER & BRAY, L.L.C.**  
Attorneys for Plaintiff

By: 


**PETER R. BRAY**

Dated: April 2, 2009

**DESIGNATION OF TRIAL COUNSEL**

Peter R. Bray, Esq. is hereby designated as trial counsel for the Plaintiff.

**BRAY, MILLER & BRAY, L.L.C.**  
Attorneys for Plaintiff

By:   
**PETER R. BRAY**

Dated: April 2, 2009

**CERTIFICATION**

I hereby certify that the within matter is not the subject of any other Court action or arbitration proceeding, pending, or contemplated. Further, all parties, known to Plaintiff at this time, who should be joined in this action have been joined.

**BRAY, MILLER & BRAY, L.L.C.**  
Attorneys for Plaintiff

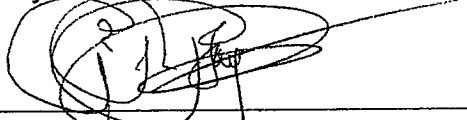
By:   
**PETER R. BRAY**

Dated: April 2, 2009

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues.

**BRAY, MILLER & BRAY, L.L.C.**  
Attorneys for Plaintiff

By:   
**PETER R. BRAY**

Dated: April 2, 2009

**BRAY, MILLER & BRAY, L.L.C.**

Attorneys At Law  
Ivy Corporate Park  
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Telephone No.: 973-739-9600  
Facsimile No.: 973-739-9696  
Attorneys for Plaintiff

RECEIVED AND FILED  
SUPERIOR COURT

2009 APR 29 AM 9:24

CIVIL DIVISION

RICHARD GREENBERG,

Plaintiff,

v.

PRO SHARES TRUST and PRO FUND  
ADVISORS, LLC,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MORRIS COUNTY  
DOCKET NO. L-1109-09

Civil Action

**AMENDMENT TO COMPLAINT**

Plaintiff, by way of Amendment to Complaint says:

1. The caption of the Complaint is amended to name "ProFund Advisors, LLC" as a Defendant, in the place and stead of Pro Shares Advisors, L.L.C.
2. All references in the Complaint to "Pro Shares Advisors, LLC" shall be deemed to mean "ProFund Advisors, LLC."

**BRAY, MILLER & BRAY, L.L.C.**

Attorneys for Plaintiff

By: \_\_\_\_\_

**PETER R. BRAY**

Dated: April 28, 2009